IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP NO. 654/2007

Judgment delivered on: November 05,2007

Shri Om Prakash
S/o Shri Gian Chandra
R/o 85, Double Storey
Ramesh Nagar
New Delhi ..... Appellant.
Through: Mr. S.C.Singhal, Advocate.

versus

Shri Devender Singh & Ors. ..... Respondent
Through: Nemo

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:

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The present appeal is preferred against the award of the Motor Accident Claims Tribunal dated 23.8.2007.

The facts in a nutshell are:-

On 19.6.98, Shri Om Prakash, aged 60 years, was travelling on a two wheeler scooter bearing registration No. DL 6SD 4740, which at the relevant time was being driven by Shri Joginder Makhija, was hit by a vehicle bearing registration No. DL1Y 4991, which was being driven in the most rash and negligent manner by Shri Devender Singh. Shri Om Prakash suffered fractures in his right leg for which he was operated upon and remained hospitalized for a month. The claim petition was filed on 28.7.1998 before MACT and award was made on 23.8.2007. Aggrieved with the said award, present appeal is preferred by the appellant claimant.

Shri S.C. Singhal, counsel for the appellant

contends that the Tribunal has not granted adequate compensation towards pecuniary damages on account of the expenses incurred by the appellant towards medical treatment.

Another contention raised by the counsel for the appellant is that due to the injury sustained by the appellant, he had closed his work for an indefinite period and due to which he has suffered immense losses.

Counsel for the appellant has drawn my attention to the evidence of the appellant who entered the witness box as PW-1. In his deposition the appellant stated that he remained in hospital for a period of one month and till the date of his deposition he had not fully recovered from the injuries sustained by him in the accident. He also stated that his mind was still not working properly and he forgot things very quickly. The appellant also deposed that after the accident his shop was totally closed as there was no one to look after the

shop.

Based on the evidence of appellant, counsel for the appellant contends that once the appellant has stated in his deposition that his shop was totally closed then the Tribunal ought to have granted compensation not only for the period from the date of the accident till the said deposition but also for the future due to the deprivation of the appellant from his business of gold smith. Counsel for the appellant contends that there is no cross-examination of the said deposition of the appellant.

I have heard counsel for the appellant at considerable length and have perused the records.

In para 17 of the judgment the Tribunal has dealt with the first contention as raised by the counsel for the appellant. The Tribunal has observed that the appellant has duly proved on record the bills of medicines in the sum of Rs.19,560/- besides the payments made by the appellant for artificial limb in the sum of Rs.9856/-.

The Tribunal has also awarded a sum of Rs.15,000/- on account of special diet and conveyance and thus in all, the total compensation under the head of medicines, medical treatment, special diet and conveyance granted by the Tribunal is Rs.44,416/-.

Perusal of the said para evidently shows that the Tribunal has allowed the payment towards the bills of medicines as produced by the appellant. For claiming pecuniary damages the claimant has to place on record the necessary proofs in the shape of documents and bills so that the compensation can be assessed under the head of pecuniary damages. Since the appellant himself has failed to place on record any other medical bill of the amount in excess of amount of Rs.19560/- the contention of the counsel for the appellant that the Tribunal should have awarded more amount towards the medical expenses, cannot be accepted.

In this regard, the Hon'ble Supreme Court has given

following observations in the judgment reported in **(2001) 8 SCC 197 entitled Lata Wadhwa vs State of Bihar**:-

> "In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken into account. In case of pecuniary damages, loss of earning or earning capacity, medical, hospital and nursing expenses, the loss of matrimonial prospects, if proved, are required to be considered. In the case of non-pecuniary losses, loss of expectation of life, loss of amenities or capacity for enjoying life, loss or impairment of physiological functions, impairment or loss of anatomical structures or body tissues, pain and suffering and mental suffering are to be considered. But for arriving at a particular figure on each of the aforesaid heads, the claimant is duty-bound to produce relevant materials, on the basis of which, a determination could be made, as to what would be the best compensation."

I, therefore, do not find any infirmity in the order of the Tribunal concerning the amount of compensation under the said head.

As regards the second contention of the counsel

for the appellant that the appellant remained without work for an indefinite period, the Tribunal in para 18 of the award has observed that the appellant did not state in his deposition as to for how much period he was without work on account of the injuries sustained by him. Even in the absence of any categorical evidence produced by the appellant still the Tribunal has taken into consideration six months period and has awarded a sum of Rs.18,000/- towards the loss of income. Perusal of the examination of the appellant also shows that although he stated that his shop was totally closed after the accident but he failed to state for how long the said shop remained closed.

In the absence of any evidence disclosing duration of the closure of the shop, the Tribunal could not have decided the period of closure of the shop itself.

I do not find any infirmity in the impugned award.

Dismissed.

November 05, 2007 **KAILASH GAMBHIR, J.**
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